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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT TACOMA

12 CHRISTOPHER M. SCALES,

13 Plaintiff,

14 v.

15 VINCE GOLDSMITH *et al.*,

16 Defendants,

Case No. C08-5480BHS/JKA

REPORT AND
RECOMMENDATION

17 **NOTED FOR:**
18 **April 2, 2009**

19 This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge
20 pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrate Judges' Rules MJR 1,
21 MJR 3, and MJR 4. On December 3, 2008, the undersigned entered a Report and Recommendation to deny a
22 motion to dismiss without prejudice. The undersigned recommended plaintiff be given thirty days to file an
23 amended complaint (Dkt. # 16).

24 The court adopted that Report and Recommendation on January 20, 2009. The court entered an order
25 that gave plaintiff until February 23, 2009, to file an amended complaint (Dkt # 17). As of March 4, 2009,
26 no amended complaint has been filed. The court now recommends this action be **DISMISSED WITH**
27 **PREJUDICE** for failure to follow a court order and failure to prosecute.

28 This dismissal is authorized by the courts inherent power to control its own docket and sanction a

1 party that fails to comply with a court order. The original motion to dismiss was denied because the court
2 could not say plaintiff was unable to plead facts that could state a claim. Plaintiff has now been given the
3 opportunity to plead those facts and he has failed to do so.

4 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
5 parties shall have ten (10) days from service of this Report and Recommendation to file written
6 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections
7 for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by
8 Rule 72(b), the clerk is directed to set the matter for consideration on **April 2, 2009**, as noted in the
9 caption.

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11 DATED this 5 day of March, 2009.

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13 /S/ J. Kelley Arnold
14 J. Kelley Arnold
United States Magistrate Judge